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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,381	10/16/2003	Thierry Fleurence	1948-4821	2245
27123 7590 04/26/2007 MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			EXAMINER PICKARD, ALISON K	
			ART UNIT	PAPER NUMBER
			3673	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/26/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/688,381	<b>Applicant(s)</b> FLEURENCE, THIERRY	
	<b>Examiner</b> Alison K. Pickard	<b>Art Unit</b> 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.  
     4a) Of the above claim(s) 4 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3, 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The new limitations to the claims are unclear. Figures 2 and 3 appear to show the lip on an outer perimeter of element P3. But, the claim requires the lip to be on an edge of the first surface and that the edges are between the outer perimeter and inner perimeter. If that portion, in the Figures, is considered the edge of the first surface, where is the edge of the second surface? The claims have been examined as best understood.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2 and 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Schmidt (6,595,525).

Schmidt discloses a seal comprising a sheet of flexible material 16 with and internal orifice. The flexible material comprises a self-adhesive skin 24. The seal comprises at least two

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lips 28 along an edge arranged perpendicular to the material 16. The lips are a different material and thus hardness from the material 16 and as seen in Fig. 2, one of the lips (i.e. one of the two at the top part) is located only along a portion of the seal. thus, the edge near the inner perimeter at the lower half of the base 16 does not have a lip.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvester (6,190,751) in view of Sellew.

Sylvester discloses a gasket comprising a sheet of flexible material having an orifice (figure 2). The sheet can have various materials of different hardness, a skin, and a cellular material. Sylvester does not disclose a lip on an edge of the seal. Sellew teaches a seal having flexible sheet and an orifice. Sellew teaches using a lip(s) on an edge to improve sealing particularly where there are imperfections in the mating surface (see col. 2, lines 28-39). The lip(s) is only at the outer perimeter as seen in Figures 5 and 6. Thus, the edge at the inner perimeter does not have a lip. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a lip as taught by Sellew to improve sealing.

Regarding the limitation that the sheet is formed by extrusion, this is considered a process limitation within a product claim and is given little patentable weight. However, Sylvester does disclose the sheet can be extruded.

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Regarding claim 3, Sylvester does not specifically disclose cellular EPDM. The selection of a known material based on its suitability for its intended use is not considered inventive. See *In re Leshin* 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use cellular EPDM in the sheet.

#### ***Response to Arguments***

7. Applicant's arguments filed 2-7-07 have been fully considered but they are not persuasive.

As best understood, Schmidt discloses an edge without a lip as required by the claims. And, Sellew teaches forming one or two lips only at an outer perimeter edge of a gasket, not at an inner perimeter.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alison K. Pickard whose telephone number is 571-272-7062. The examiner can normally be reached on M-F (10-7:30), with alternate Friday's off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alison K. Pickard  
Primary Examiner  
Art Unit 3673

AP